REMARKS

The present Office Action addresses and rejects claims 14-29. Applicants respectfully request reconsideration in view of the amendments and remarks herein.

Amendments to the Claims

Claims 14 and 27 have been amended to more particularly point out and distinctly claim the present invention. In particular, applicants amend independent claim 14 to recite that the slot is adapted to prevent the feature from passing through *any portion* thereof. Independent claim 27 is amended to recite that the feature *has a width greater than the maximum width of the slot* formed in the sidewall of the access device. Support for these amendments can be found throughout the specification and the drawings. No new matter is added.

These amendments do not encompass new subject matter and do not require an additional subject matter search. As such, Applicants respectfully request that the claims as amended be entered for examination pursuant to MPEP §§ 714.12-13. Applicants consider that in view of these amendments and the arguments set forth below, the application is in condition for allowance. In the alternative, if the claims are not found to be in condition for allowance, the amendments would place the claims in better condition for appeal.

Claim Rejections Pursuant to 35 U.S.C. § 102(e)

The Examiner rejects claims 14-29 pursuant to 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2005/0085813 of Spitler el al. ("Spitler"), arguing that Spitler discloses the claimed invention. Applicants respectfully disagree.

Claim 14

Amended independent claim 14 recites a method for implanting a spinal fixation element into at least one spinal anchor disposed within a vertebra in a patient's spinal column. The method includes introducing a spinal fixation element having a feature formed adjacent to a terminal end thereof through a lumen in an access device coupled to a spinal anchor. The access device includes a slot formed in a sidewall adjacent to a distal end thereof and adapted to prevent the feature from

passing *through any portion thereof.* The method also includes manipulating the spinal fixation element to cause the feature to sit within a receiving member of the spinal anchor coupled to the access device, and to cause a remaining portion of the spinal fixation element to extend through the slot.

Spitler fails to teach or even suggest the claimed method because it lacks a slot adapted to prevent a feature of a spinal fixation element from passing through any portion thereof. Instead, as shown in FIGS. 4 and 12B of Spitler, feature 91 of brace 90 can pass through slot 403 at opening 402. In fact, as explained in paragraph 0041 of Spitler, feature 91 is specifically designed to pass through a portion of the slot: "This bending forces brace end 91 out of cannula 41 (through opening 402 thereof) and through the prepared muscle opening and into opening 402 of cannula 42." Thus, the feature 91 of Spitler is free to pass through a portion of the slot 403 and therefore Spitler fails to teach or suggest a slot adapted to prevent a feature from passing through any portion thereof, as expressly required by claim 14.

Accordingly, amended independent claim 14 distinguishes over Spitler and represents allowable subject matter. Claims 15-26 are allowable at least because they depend from an allowable base claim.

Claim 27

Amended independent claim 27 recites a method for implanting a spinal fixation element that includes providing at least two spinal anchors implanted in adjacent vertebrae of a patient's spine and providing an access device having an inner lumen extending between proximal and distal ends. The distal end is adapted to couple to one of the spinal anchors. The access device includes a slot formed in a sidewall thereof adjacent to the distal end. The method also includes providing a spinal fixation element having a first end and a second end with a feature formed thereon. The feature *has a width that is greater than a maximum width of the slot* to prevent passage thereof through the slot in the sidewall of the access device. The method also includes inserting the spinal fixation element through the lumen in the access device and manipulating the spinal fixation element to cause the feature to be positioned within the spinal anchor attached to the access device and the first end to extend through the slot, such that the spinal fixation element extends between the spinal anchors.

Spitler fails to teach or even suggest the claimed method because it lacks a feature having a width that is greater than a maximum width of a slot formed in the sidewall of an access device. As shown in FIG. 4 of Spitler, slot 403 has a maximum width at 402. As further shown in FIGS. 4 and 12B and discussed at paragraph 0041 of Spitler, the width of feature 91 is specifically designed to be less than the maximum width of slot 403 so as to allow the feature to pass through the slot. Thus, Spitler fails to teach or suggest an express requirement of claim 27, namely a feature having a width greater than the maximum width of the slot.

Accordingly, amended independent claim 27 distinguishes over Spitler and represents allowable subject matter. Claims 28-29 are allowable at least because they depend from an allowable base claim.

Conclusion

Applicants submit that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicants' amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

Date: Nov. 29, 2007

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